

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GREGORY BARTUNEK,

Defendant.

8:17CR28

ORDER

Defendant has requested that he be provided copies of documents so he can prepare a motion under 28 U.S.C. § 2255. ([Filing No. 442](#).) Defendant wants (1) the Statement of Reasons for Sentencing; (2) the Amended Presentence Investigation Report, which is actually the Third Revised Presentence Investigation Report and the Court will refer to it as such throughout this Order ([Filing 383](#)); and (3) the sealed portion of the transcript (pgs. 5-23) of the October 17, 2018 hearing on Andrew Wilson's motion to withdraw as counsel. ([Filing No. 407](#).)

Defendant claims he needs these documents to prepare a § 2255 motion under 28 U.S.C. § 2255. Defendant asserts he needs the Statement of Reasons and Third Revised Presentence Investigation Report to show that his sentence was procedurally and substantially unreasonable. He claims his sentence was improperly calculated under the Sentencing Guidelines because the number of child pornography images was counted incorrectly. Defendant maintains he needs the sealed portion of the hearing transcript because Mr. Wilson's representation was ineffective and the Court forced Mr. Wilson to represent him against his will.

Defendant asks that the Statement of Reasons, the Third Revised Presentence Investigation Report, and the transcript he is requesting be unsealed and that the Court allow his son to access the documents via the internet and then forward them to him. Alternatively, Defendant requests that the Court inform him of the cost of the copies so he can pay for them and have them sent to him.

The Court will not unseal these documents. They are confidential and need to remain so. However, Defendant is entitled to a copy of the transcript, [Filing No. 407](#), if he pays for it. The

Court will direct the Clerk of Court to provide Defendant with the cost for a copy of the transcript so he can arrange for payment and have it sent to him.

As to the Statement of Reasons and the Third Revised Presentence Investigation Report, the court cannot allow copies of these documents to be sent to Defendant because the Bureau of Prisons (BOP) Policies do not allow inmates to obtain or possess these documents post sentencing. *See BOP Policies 1351.05*, available at https://www.bop.gov/resources/policy_and_forms.jsp. Inmates violating this provision of the policy are subject to disciplinary action. *Id.* However, this does not mean Defendant cannot have access to these documents for review. The BOP policy acknowledges that even though inmates are prohibited from obtaining and possessing photocopies of these documents, they must be provided a reasonable opportunity to access and review their Presentence Reports and Statement of Reasons. *Id.* The policy further provides that “inmates are responsible for requesting an opportunity to access and review these records with unit staff in accordance with the Program Statement on Inmate Central File, Privacy Folder and Parole Mini-Files.” *Id.* Therefore, Defendant has access to the information he is requesting through his facility. Defendant just needs to make the proper request. Based on the above, Defendant’s request for copies of the Statement of Reasons and the Third Revised Presentence Investigation Report is denied.

Defendant also requests that Andrew Wilson be removed as his counsel of record. However, this case is closed and Defendant’s appeal to the Eighth Circuit Court of Appeals and the United States Supreme Court have been completed. Therefore, there is no reason to remove Mr. Wilson as counsel of record.

IT IS ORDERED that Defendant’s request for copies is granted, in part. The Clerk of Court is directed to mail a copy of this Order, along with the cost of a copy of the sealed transcript ([Filing No. 407](#)) to Defendant. Defendant’s motion is otherwise denied.

Dated this 25th day of March, 2021.

BY THE COURT:

s/ Susan M. Bazis
United States Magistrate Judge